



## **Protecting Self-Insured Workers' Compensation Programs from Coronavirus Claims**

Over the last few weeks, many of our clients have inquired about the recent coronavirus (COVID-19) outbreak and how it may impact their self-insured workers' compensation programs. Under most circumstances, employees who contract a communicable disease are barred from filing a claim under a state workers' compensation Act, even if the exposure occurred at work. In general, a communicable disease claim is only covered under a state Act if the conditions of employment present a unique and unusual exposure to the employee beyond what he or she would otherwise encounter outside the working environment. There are however certain circumstances under which a communicable disease claim may be covered by the Act. If a self-insured employer is required to cover a communicable disease claim and purchases an excess workers' compensation policy, the excess coverage will likely respond but it is important to understand how disease claims are covered by these policies.

Excess WC policies define most types of claims as an occurrence or event that causes a loss. This provision allows a self-insured employer to combine the losses from multiple individuals injured in the same event under a single self-insured retention (SIR) rather than separately for each employee. For example, if four employees were traveling together and their vehicle was involved in an accident, the employer would only need to satisfy the SIR one time for the combination of all the injured employees' claims and not separately for each claimant. By contrast, most excess WC policies require a separate SIR per employee for claims of occupational disease and illness.

One potential way for self-insured employers to help mitigate the financial impact of these claims is with a communicable disease endorsement. A communicable disease coverage is an endorsement that attaches to an underlying excess WC policy. It combines the claims of multiple individuals suffering from the same communicable disease stemming from the same exposure under a single retention (SIR). Unfortunately, not every carrier provides this coverage and even

those that do may not be willing to provide them for certain employers, in certain states and/or for certain classes of operations. Further, each communicable disease coverage has its own set of definitions, rules and limitations, so even if two excess policies contain communicable disease endorsements, they may respond differently even to the same claim. A more detailed description of these nuances is included in the following

article: <https://www.insurancethoughtleadership.com/ebola-and-beyond-protecting-self-insured-work-comp-plans/>

The workers' compensation rules governing disease claims vary from state to state and can sometimes be very difficult to predict; especially in unusual circumstances. Most states will cover communicable disease claims from healthcare workers and first responders under their Acts but these laws may also apply to other individuals such as school employees, traveling employees and possibly others who are exposed to diseases in the course and scope of their employment. Should an employee file a claim related to the coronavirus or any other communicable disease exposure, it is likely a state WC court may ultimately need to determine whether or not it is compensable.

There are two very good recent blog posts that discuss the legal complexities of communicable diseases in workers' compensation:

**Thomas Robinson** provides specific examples of communicable disease cases in several states in his blog, *The Workcomp Writer*: <http://www.workcompwriter.com/for-workers-comp-world-coronavirus-is-a-real-snake-in-the-grass/>

**John Geaney** explores legal precedent surrounding communicable disease claims in the *NJ Workers' Compensation Blog*: <https://www.linkedin.com/pulse/potential-impact-coronavirus-new-jersey-workers-john-geaney/>

Given the widespread nature of the coronavirus and its potential to infect large populations of people in a relatively short period of time, it would be prudent for self-insured employers to review their excess WC policies to determine how they respond to communicable disease claims. In some instances, carriers may be willing to add a communicable disease endorsement to an existing policy mid-term. If the coverage is not available mid-term, it is certainly worth considering when negotiating the renewal policy. Even if the coverage requires additional premium, the investment is worth serious consideration as it could potentially save an employer hundreds of thousands or even millions of dollars if multiple employees are infected and require significant medical treatment.

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